UNITED MALAYAN BANKING CORP. BHD.

v.

BADRUDDIN MOHAMMAD

HIGH COURT MALAYA, JOHOR BAHRU
ZAKARIA YATIM J
[ORIGINATING SUMMONS NO. 31-1231 OF 1987]
28 FEBRUARY 1992

LAND LAW: *Charge of land to plaintiff to secure payment of overdraft - Failure to regularise account to satisfaction of plaintiff - Letter of demand - Four months later notice given in Form 16D - Whether defective - Figure admitted by plaintiff and figure stated in Form 16D differed - National Land Code 1965 ss. 253, 254, 255.*

In this case the defendant and his wife had charged their land to the plaintiff to secure the repayment of an overdraft. The charge was to cover an overdraft of RM196,000 including interest due and owing to the plaintiff. As the defendant failed to regularise his account to the satisfaction of the plaintiff, the plaintiff through their solicitors made a demand for payment by their letter dated 3 February 1987. The defendant then replied by letter on 24 February 1987, stating his reasons for being unable to meet the demand. On 6 June 1987, the plaintiff again through their solicitors wrote to the defendant a second letter of demand. On the same date the plaintiff's solicitors issued a notice in Form 16D in accordance with s. 254 of the National Land Code.

Defence Counsel raised the issue that the letter dated 3 February 1987 was not a proper demand letter and argued that before issuing the statutory notice in Form 16D a demand had to be made on the chargor. Another point contended was that the Form 16D notice was defective as it demanded a wrong (notice in Form 16D) figure of RM283,385.09 whereas in para. 6 of encl. 15 the plaintiff admitted that the amount due as at 31 May 1988 was RM268,729.17. Therefore, the notice was defective for failure to comply with s. 254(1) of National Land Code.

Held:

[1] The letter dated 3 February 1987 was a proper demand letter sent by the plaintiff as chargee to the defendant as chargor.

[2] The notice in Form 16D was not bad in law and there was no evidence that the plaintiff had been prejudiced or misled by the amount stated in the notice in Form 16D. As both parties agreed to the figure stated in para. 6 encl. 15, the plaintiff was entitled only to that amount, being RM268,729.17 with interest.

[Plaintiff's application allowed.]

Cases referred to:

Jacob v. Overseas Chinese Banking Corp. Ipoh [1974] 2 MLJ 161 ***(foll)***
Sykt. Kewangan Malayan Raya Bhd. v. Malayan Banking Bhd. [1984] 1 MLJ 115 ***(foll)***

Legislation referred to:

National Land Code 1965, ss. 254, (1), 256

For the plaintiffs - K.T. Tan; M/s. Tan & Tan
For the defendant - K.H. Choo; M/s. K.H. Choo & Co.

JUDGMENT

Zakaria Yatim J:

In this application, the plaintiff is asking the Court, under s. 256 of the National Land Code for an order that a piece of land comprised in HS(D) 3811 of PT 566 in the Mukim of Setapak in the District of Gombak in the State of Selangor (the said land) be sold by public action.

The plaintiff had earlier granted overdraft facilities to the defendant and his wife, Easah bt. Ismail. The defendant charged the said land in favour of the plaintiff as security for the repayment of a principal sum of RM190,000 plus interest due and owing by the defendant and his wife. The defendant and his wife failed to regularise their account to the satisfaction of the plaintiff. On 3 February 1987, the plaintiff's solicitors wrote to them a letter of demand which *inter alia* states:

> In this circumstances, we are instructed by our clients to demand from you which we hereby do the sum of RM273,494.07 being outstanding balance on overdraft as at 17 January 1987 together with further interest calculated thereon at 13.5% per annum on monthly rests basis.

Upon receipt of the letter of demand, the defendant, on 24 February 1987 wrote the following letter to the plaintiff:

> The Manager,
> United Malayan Banking Corp. Bhd.,
> Komplex Tun Razak,
> Jalan Ah Fook,
> P.O. Box 110,
> Johor Bahru 80000.
>
> Dear Sir,
>
> **Overdraft Facility Under Account No. 7674**
>
> We refer to the legal demand notice by your Lawyers Messrs. Tan and Tan of Johor Bahru concerning the above facility. We regret to inform you that we are unable to meet the demand now due to the following:
>
> 1. We have not been able to dispose of our Malay Reserve Lands despite repeated advertisement in the newspaper. We intend to utilise the proceeds from the sale to reduce our overdraft facility with you. Once sale could be finalised, we will definitely reduce the present over-limit.
>
> 2. Our island resort project is under construction and we have invested huge sums in the company "Sibu Island Resorts Sdn. Bhd.". We cannot afford to see this project fail. We expect the resort to be operational by May or June this year. Until then, we will not be earning any income. Instead all our efforts are being concentrated on the resort project.
>
> This overdraft facility is closely related to this project and one cannot ignore the fact that part of our investments in the said company originate from the overdraft.
>
> We are confident that once this project starts to be operational, the cash inflow will assist us in reducing the overdraft facility. Besides that, proceeds of sale of our land should be forthcoming once a reasonable deal could be finalised.
>
> We shall therefore be very grateful if you can give us more time to concentrate our efforts in disposing of our land assets and the completion of our island resort project.
>
> Your assistance, co-operation and sympathy in this problem shall be very much appreciated.

Thank you.

Yours sincerely,

Sgd/- Badruddin bin Mohammad.

On 6 June 1987, the plaintiff through their solicitors wrote to the defendants a second letter of demand. The relevant paragraph of the letter states as follows:

> In this circumstances, we are further instructed by our clients to demand from you which we hereby do the sum of RM285,385.09 being the outstanding overdraft balance as at 27 April 1987 together with further interest calculated thereon at 13.5% per annum on monthly rests basis.

On the same date the plaintiff's solicitors issued a notice in Form 16D in accordance with s. 254 of the National Land Code. The notice was duly served on the defendant. It reads as follows:

NATIONAL LAND CODE
FORM 16 D
(Section 254)

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE.

To: En. Badruddin Bin Mohammad @ Mamad of No. 25 Jalan Suasa Satu, Taman Kolam Air, 80200 Johor Bahru ...

Chargor/s under the charge described in the Schedule below of the land so described.

Whereas you have committed a breach of the provisions of this charge by failing to pay to the chargees the principal sum and interest thereon secured by the charge and amounting to RM285,385.09 being outstanding overdraft balance as at 27 April 1987 together with further interest at the rate of 13.5% per annum on monthly rests.

And whereas the breach has continued for a period of at least one month prior to the date of this notice;

We, as chargees, by virtue of the powers conferred by s. 254 of the National Land Code, hereby require you within the period of one month from the service of this notice to remedy the breach;

And take notice that if you fail to remedy the breach within that period, we shall apply for an order of sale.

Dated this 6 June 1987.

Sgd/- Tan & Tan

Signature (or other form
of execution) by or on behalf
of chargees.
(Tan & Tan. solicitors
for the plaintiffs).

At the hearing of the application, Mr. Choo, Counsel for the defendant submitted that the letter dated 3 February 1987 was not a proper demand letter. He argued that before issuing the statutory notice in Form 16D a demand had to be made on the chargor. Mr. K.T. Tan, Counsel for the plaintiff replied that the plaintiff had made a demand as shown in Exh. 2 to encl. 2 that is the letter dated 3 February 1987. He said that Form 16D was sent four months after the demand letter was sent to the defendant. In my view the letter dated 3 February 1987 was a proper demand letter sent by the plaintiff as chargee to the defendant as chargor.

The next point raised by Mr. Choo was that the notice in under Form 16D was defective. He referred to para. 6 of encl. 15 which states:

> 6. For convenience of calculation of the liability of the defendant as chargor in his charge, the plaintiffs say as on 1 November 1985, the liability of the defendant cannot be less than RM190,000 as some of the amounts due under the excess of RM190,000 comprises of accumulated interest. By limiting the liability of the defendant to RM190,000 as on 1 November 1985, then the amount due from the defendant together with accumulated interest is RM268,729.17 as at 31 May 1988. The interest rate is 13.5% per centum per annum on monthly rests. A copy of the adjusted account and interest is annexed hereto and marked 'ABA3'.

Mr. Choo submitted that in para. 6 of encl. 15 the plaintiff admitted that the amount due to the plaintiff as at 31 May 1988 was RM268,729.17 but the amount stated in the notice in Form 16D was RM283,385.09. He said he agreed with the figure as stated in para. 6 above. But he contended that the plaintiff had failed to comply with s. 254(1) of the National Land Code in that they had demanded a wrong figure in the notice.

Mr. Tan submitted that the figure as stated in para. 6 of encl. 15 was the correct figure. He conceded that the amount stated in the notice was not correct but maintained that the notice was not defective.

It is not in dispute that the amount due to the plaintiff as at 31 May 1988 was RM268,729.17. The question is whether the notice was defective. In *Jacob v. Overseas Chinese Banking Corp., Ipoh* [1974] 2 MLJ 161 the chargee wrote a letter of demand to the chargor stating that the chargor had overdrawn in excess of the authorised limit of RM6,000. A notice in Form 16D was subsequently issued and the amount stated in the notice was RM6,655.55. The Federal Court ordered that the amount be reduced to RM6,000. In *Sykt. Kewangan Malayan Raya Bhd. v. Malayan Banking Bhd.* [1984] 1 MLJ 115, Mohamed Azmi FJ, as he then was, in delivering the judgment of the Federal Court, said at p. 118:

> ... In our view, whether a notice of default with respect to a charge or charges in Form 16D is bad in law would depend on whether the chargor has been prejudiced or misled by any defect in the notice so as to render the granting of the order of sale unjust, and this in turn must necessarily depend on the circumstances of each particular case ...

In the present case I find no evidence that the defendant had been prejudiced or misled by the amount stated in the notice. His letter dated 24 February 1987 (reproduced above) was in response to the first letter of demand sent by the plaintiff. In that letter the defendant asked for more time to enable him to reduce the overdraft facility.

Having considered the evidence and all the circumstances in this case I am satisfied that the notice was not bad in law. There is no evidence that the defendant was prejudiced or misled by the notice.

Since both parties agreed to the figure as stated in para. 6 of encl. 15, the plaintiff is entitled only to that amount with interest.

In the circumstances I make an order of sale by public auction and other consequential orders as prayed.

Also found at [1992] 4 CLJ 2060